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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,398	12/17/2004	Cristiano Casale	034170-026	8007
21839	7590	11/16/2007		
BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER JACYNA, J CASIMER	
			ART UNIT 3754	PAPER NUMBER
			NOTIFICATION DATE 11/16/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com
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Office Action Summary

Application No.

10/518,398

Applicant(s)

CASALE ET AL.

Examiner

J. Casimer Jacyna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 1-6, 10, 11 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 091707.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 7-40982. Bernstein discloses an opening device including a frame 80, a pierceable portion of a package 48, a threaded cap 70, a cutting member 90, a first connecting means 74, 94, second connecting means 82, 92 and a plurality of teeth 96, any one of which could be a main blade or a first tooth substantially as claimed but does not disclose the teeth to decrease in height. However, Japan teaches another package opening device having the teeth 231 decrease in height as claimed apparently for the purpose of enhancing the piercing of the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with decreasing teeth height as, for example, taught by Japan in order to enhance the piercing of the package.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 7-40982 as applied to claim 1 above and further in view of Laciacara et al. (6,279,779). Bernstein discloses an opening device substantially as claimed but does not disclose breakable joining means. However, Laciacara teaches another package opening device having breakable opening means 62 for the purpose of ensuring that the teeth do not move prior to usage of the device.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with breakable opening means as, for example, taught by Laciacara in order to ensure that the teeth do not move prior to usage of the device.

4. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 7-40982 as applied to claim 1 above and further in view of Debetencourt (4,884,705). Bernstein discloses an opening device substantially as claimed but does not disclose a blade tooth with an asymmetric triangular shape. However, Debetencourt teaches another package opening device having a blade tooth with an asymmetric triangular shape for the purpose of ensuring that the cut part does not break off from the remainder of the lid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with a blade tooth with an asymmetric triangular shape as, for example, taught by Debetencourt in order to ensure that the cut part does not break off from the remainder of the lid.

5. Claims 1-6, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 11-171233. Bernstein discloses an opening device including a frame 80, a pierceable portion of a package 48, a threaded cap 70, a cutting member 90, a first connecting means 74, 94, second connecting means 82, 92 and a plurality of teeth 96, any one of which could be a main blade or a first tooth substantially as claimed but does not disclose the teeth to decrease in height. However, Japan teaches another package opening device having

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the teeth 32 decrease in height as claimed for the purpose of enhancing the piercing of the package as discussed in the specification, shown in figure 4 and also discussed in paragraph 8 of Berman (2007/0062709). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with decreasing teeth height as, for example, taught by Japan in order to enhance the piercing of the package.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 11-171233 as applied to claim 1 above and further in view of Laciacara et al. (6,279,779). Bernstein discloses an opening device substantially as claimed but does not disclose breakable joining means. However, Laciacara teaches another package opening device having breakable opening means 62 for the purpose of ensuring that the teeth do not move prior to usage of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with breakable opening means as, for example, taught by Laciacara in order to ensure that the teeth do not move prior to usage of the device.

7. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 11-171233 as applied to claim 1 above and further in view of Debetencourt (4,884,705). Bernstein discloses an opening device substantially as claimed but does not disclose a blade tooth with an asymmetric triangular shape. However, Debetencourt teaches another package opening device having a blade tooth with an asymmetric triangular shape for the purpose of ensuring

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that the cut part does not break off from the remainder of the lid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with a blade tooth with an asymmetric triangular shape as, for example, taught by Debetencourt in order to ensure that the cut part does not break off from the remainder of the lid.

8. Applicant's arguments filed 9/17/2007 have been fully considered but they are not persuasive. Applicant contends that Japan/40982 doesn't disclose teeth of different heights and that since Japan/40982 does not rotate it cannot be combined with Bernstein. However, the drawings clearly show the teeth to become shorter in figures 4 and 7 with the longer teeth contacting the container first and pushing the cut portion of the container to the left as shown in figures 3, 6 and 8. Wherein figures 3, 6 and 8 show that there is an advantage to having teeth of decreasing height in that the cut portion of the container is efficiently pushed to one side while being separated. One of ordinary skill in the art would have recognized this advantage and thought it obvious, or at least would have a high probability of success, in applying this teaching to Bernstein. In regard to the rotation, one of ordinary skill in the art when applying the teachings of Japan/40982 to Bernstein would have considered it obvious to locate the teeth so that they rotated from the longer teeth to the shorter because if they rotated from the shorter teeth to the longer the shorter teeth would not contact the container since the cutter is positioned with the longer teeth resting on the container as shown in figures 4 and 7 of Japan/40982. This direction of rotation would render the shorter teeth ineffective and unused. Therefore, one of ordinary skill in the art would have considered the claimed

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direction of rotation the only effective direction of rotation and thereby the obvious direction of rotation.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Paragraph 8 of Berman discusses the operation of applied reference Japan 11-171233.

10. Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 12 and 13 are allowed.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

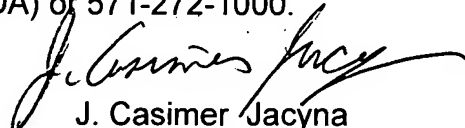
Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-

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4889. The examiner can normally be reached on Wed. thru Fri. 9AM-7PM, Mon. 7AM-1PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



J. Casimer Jacyna
Primary Examiner
Art Unit 3754

CJ